

REMEDIES FOR NURSING FACILITIES WHICH DO NOT MEET
THE REQUIREMENTS FOR PARTICIPATION

In accordance with Section 1919(h) of the Social Security Act, Indiana's remedies for Nursing Facilities not in compliance with the requirements of participation include the following:

IC 16-10-4 15.1 (a) The council shall, by rules adopted under IC 4-22-2, classify each rule adopted to govern a health facility under this chapter into one (1) of the following categories:

- (1) An offense, which presents a substantial probability that death or a life-threatening condition will result.
 - (2) A deficiency, which presents an immediate or direct, serious adverse effect on the health, safety, security, rights, or welfare of a patient.
 - (3) A noncompliance, which presents an indirect threat to the health, safety, security, rights, or welfare of a patient.
 - (4) A nonconformance, which is any other classified breach that does not fall in the above three (3) categories.
- (b) Upon a determination of the commissioner that a breach of this chapter or a rule adopted under this chapter has occurred, the director shall issue a citation under IC 4-21.5-3-6 to the administrator of the health facility in which the breach has occurred. The citation must state the following:
- (1) The nature of the breach.
 - (2) The classification of the breach.
 - (3) The corrective actions required of the health facility to remedy the breach and to protect the patients of the facility.
 - (4) Any penalty imposed on the facility.
- (c) A person aggrieved by a citation issued under this section may request a review under IC 4-21.5-3-7. If a request for a hearing is not filed within the fifteen (15) day period, the determination contained in the citation is final.
- (d) The commissioner shall impose the following remedies for breaches of this chapter or a rule adopted under this chapter:
- (1) For an offense, the remedies specified in subsection (e)(1) through (e)(2). The commissioner may also impose the remedy specified in subsection (e)(3).
 - (2) For a deficiency, the remedies specified in subsection (e)(1). The commissioner may also impose the remedies specified in subsection (e)(4).
 - (3) For a breach that is a repeat of the same deficiency within a fifteen (15) month period, the remedies specified in subsection (e)(1) through (e)(2). The commissioner may also impose the remedy specified in subsection (e)(3).

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- (4) For a noncompliance, the remedies specified in subsection (e)(5).
- (5) For a breach that is a repeat of the same noncompliance within a fifteen (15) month period, the remedies specified in subsection (e)(1). The commissioner may also impose the remedies specified in subsection (e)(4).
- (6) For a nonconformance, the remedies specified in subsection (e)(6).
- (7) For a breach that is a repeat of the same nonconformance within a fifteen (15) month period, the remedies specified in subsection (e)(5).
- (e) The remedies for breaches of this chapter or rules adopted under this chapter are as follows:
 - (1) Issuance of an order for immediate correction of the breach.
 - (2) Imposition of a fine not to exceed ten thousand dollars (\$10,000) or suspension of new admissions to the health facility for a period not to exceed forty-five (45) days, or both.
 - (3) Revocation by the director of the health facility's license or issuance of a probationary license.
 - (4) Imposition of a fine not to exceed five thousand dollars (\$5,000) or suspension of new admissions to the health facility for a period not to exceed thirty (30) days, or both.
 - (5) Require the health facility to submit a plan of correction under section 17 of this chapter. If the health facility is found to have a pattern of breach, the commissioner may suspend new admissions to the health facility for a period not to exceed fifteen (15) days or impose a fine not to exceed one thousand dollars (\$1,000) or both.
 - (6) Require the health facility to submit a plan of correction under section 17 of this chapter.
- (f) If a breach is immediately corrected and the commissioner has imposed remedies under subsection (e)(2), the commissioner may waive up to fifty percent (50%) of the fine imposed and reduce the number of days for suspension of new admissions by one-half (1/2).
- (g) The commissioner, with the concurrence of a physician licensed under IC 25-22.5, may impose the following:
 - (1) For an omission of care or an act that does not fall within a classification of a rule under this section and that the facility should reasonably have known would present a substantial probability that death or a life threatening condition will result, one (1) or any combination of the remedies specified in subsection (e)(1) through (e)(3).
 - (2) For an omission of care or an act that does not fall within a classification of a rule under this section and that the facility should reasonably have known would result in an immediate or direct serious adverse effect on the health, safety, security, rights, or welfare of a patient, the remedies specified in subsection (e)(1) or (e)(4), or both.

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IC 16-10-4-16 (a) In determining appropriate remedies of waivers under section 15.1 of this chapter, the commissioner shall consider:

- (1) whether the breach occurred for reasons outside of the health facility's control;
 - (2) whether the health facility has demonstrated that it has taken the appropriate steps to reasonably insure that the breach will not reoccur;
 - (3) the history of breaches by the health facility;
 - (4) whether any financial savings or benefit accrued to the health facility as a result of the breach;
 - (5) the cost incurred by the health facility in correcting the breach; and
 - (6) the effect of the breach on the patient.
- (b) The commissioner need not consider the factors under subsection (a)(4) and (a)(5) unless the health facility furnishes sufficient relevant financial information.

IC 16-10-4-17 (a) An order for immediate correction under section 15.1(e)(1) of this chapter shall state a specific date by which the correction shall be made. The date shall be set by the commissioner according to the circumstances of the breach but shall not exceed five (5) days from the time the health facility receives written notification from the commissioner.

- (b) A plan of correction which a health facility is required to submit to the commissioner under section 15.1(e)(5) or 15.1(e)(6) of this chapter shall contain a fixed time period within which the correction shall be made. The plan of correction may be accepted, modified upon agreement between the commissioner and the health facility, or rejected by the commissioner. If the plan of correction is rejected, the commissioner shall send notice of the rejection and the reasons for the rejection to the health facility, and impose a plan of correction on the health facility. If the breach was corrected prior to submission and approval of a plan of correction, the health facility may submit a report of correction in place of a plan of correction.
- (c) A plan of correction imposed on a health facility by the commissioner may also be modified upon agreement between the commissioner and the health facility.
- (d) A petition for modification of a plan of correction must be filed with the commissioner prior to the expiration of the correction time period approval by the commissioner. The burden of proof is on the petitioner to show good cause for not being able to comply within the approved correction time period.
- (e) When establishing a corrective period the commissioner shall consider:
- (1) a reasonable amount of time needed by a health facility to achieve compliance;
 - (2) the effects of the continuing breach on patients; and
 - (3) temporary measures which will be taken to protect patients during the time allowed for correction.

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(f) If a breach is not corrected within the time period fixed by the order of correction or is not corrected within the time fixed by the plan of correction, and an extension has not been granted under subsection (d), the commissioner may find a new breach which may be subject to the imposition of such additional penalties as the class would warrant.

IC 16-10-4-18 In the case of an emergency, the director, with the approval of the commissioner, may order the relocation of a patient from a health facility under IC 4-21.5-4. The council shall adopt rules governing the emergency relocation of patients which shall provide for:

- (1) notice to the patient, the patient's next of kin, guardian, and physician of the emergency transfer and the reasons for the relocation; and
- (2) protections designed to ensure the welfare and desires of the patient.

IC 16-10-4-19 (a) The director may issue an order under IC 4-21.5 to place a monitor in a health facility if:

- (1) the health facility is operating without a license;
 - (2) the existing license of a health facility has been revoked or not renewed;
 - (3) the:
 - (A) director has initiated revocation procedures, or has placed the health facility on a probationary license; and
 - (B) director has determined that the health, safety, security, rights, or welfare of the patients cannot be adequately assured during the pendency of such procedures or during the term of a probationary license; or
 - (4) the health facility is closing or plans to close and adequate arrangements for relocation of the patients have not been made at least thirty (30) days before the date of closure.
- (b) An order issued under subsection (a) may be appealed under IC 4-21.5.
- (c) A monitor placed in a health facility under this section shall:
- (1) be licensed under IC 25-19-1;
 - (2) serve as a consultant to the administrator concerning the operation of the health facility; and
 - (3) submit a written report to the director on the operation of the health facility and the status and condition of the patients.
- (d) The costs of placing a monitor in a health facility under this section shall be paid by the health facility unless it is determined by a final order under IC 4-21.5 that the placement of the monitor was not needed in which case the costs shall be reimbursed by the state.

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(e) Except as required by subsection (c)(3) of this section, the monitor shall observe the strict confidentiality of the operating policies, procedures, employment practices, financial information, and all similar business information of the health facility. An individual who violates this subsection commits a Class A misdemeanor and is prohibited from serving as a monitor under this chapter for a period of five (5) years.

IC 16-10-4-20 (a) The director, and after consultation with the commissioner and the chairman of the council, may request the attorney general to petition the circuit or superior court of the county in which a health facility is located to place the facility in receivership to protect the patients in the facility.

(b) The court may order a health facility placed in receivership in the following circumstances:

- (1) the facility is operating without a license.
- (2) The license of the facility has expired or been revoked.
- (3) The facility is closing or plans to close and adequate arrangements have not been made for the orderly transfer of patients at least (30) days prior to closing.
- (4) The facility is operating under extraordinary conditions which present a major threat to the health, safety, security, rights, or welfare of a facility's patients, including imminent abandonment of the facility by the owner.

(c) A receiver appointed by a court under this section shall be selected from a list of qualified and experienced individuals compiled by the council.

(d) The receiver shall be licensed under IC 25-19-1 and has such powers and duties as granted by the court to protect the interests of the patients in the health facility. These powers and duties may include providing for the orderly relocation of patients from the health facility and the refusal to admit new patients pending closure.

(e) Unless the health facility is ordered to be closed within one hundred twenty (120) days, the receiver shall operate the health facility subject to the same standard and rate criteria that apply to all health facilities licensed under this chapter.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Indiana

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

The State uses other factors described below to determine the seriousness of deficiencies in addition to those described at §488.404(b)(1):

N/A

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